REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3964-71 OF 2007

M/S BANGALORE CLUB …Appellant

VERSUS

THE COMMISSIONER OF WEALTH TAX & ANR. ...Respondents

J U D G M E N T

R.F. Nariman, J.

1. In the year of grace 1868, a group of British officers banded together to start the Bangalore Club. In the year of grace 1899, one Lt. W.L.S. Churchill was put up on the Club's list of defaulters, which numbered 17, for an amount of Rs.13/- being for an unpaid bill of the Club. The "Bill" never became an "Act". Till date, this amount remains unpaid. Lt. W.L.S. Churchill went on to become Sir Winston Leonard Spencer Churchill, Prime Minister of Great Britain. And the Bangalore Club continues its mundane existence, the only excitement being when the tax collector knocks at the door to extract his pound of flesh.

2. Fast forward now from British India to free India and we come to assessment years 1981-82 and 1984-85 upto 1990-91. The question for determination in these appeals is whether Bangalore Club is liable to pay wealth tax under the Wealth Tax Act. The order of assessment dated 3rd March, 2000, passed by the Wealth Tax Officer, Bangalore, referred to the fact that Bangalore Club is not registered as a society, a trust or a company. The assessing officer, without further ado, "after a careful perusal" of the rules of the Club, came to the conclusion that the rights of the members are not restricted only to user or possession, but definitely as persons to whom the assets of the Club belong. After referring to Section 167A, inserted into the Income Tax Act, 1961, and after referring to Rule 35 of the Club Rules, the assessing officer concluded that the number of members and the date of dissolution are all uncertain and variable and therefore indeterminate, as a result of which the Club was liable to be taxed under the Wealth Tax Act. By a cryptic order dated 25th October, 2000, the CIT (Appeals) dismissed the appeal against the aforesaid order. On the other hand, by a detailed order passed by the Income Tax Appellate Tribunal, Bangalore dated 7th May, 2002, the Appellate Tribunal first referred to the Objects of the Bangalore Club, which it described as a "social" Club, as follows:

> "1. To provide for its Members, social, cultural, sporting, recreational and other facilities;

2. To promote camaraderie and fellowship among its members.

3. To run the Club for the benefit of its Members from out of the subscriptions and contributions of its member.

4. To receive donations and gifts without conditions for the betterment of the Club. The General Committee may use its discretion to accept sponsorships for sporting Areas

5. To undertake measures for social service consequent on natural calamities or disasters, national or local.

6. To enter into affiliation and reciprocal arrangements with other Clubs of similar standing both in India and abroad.

7. To do all other acts and things as are conducive or incidental to the attainment of the above objects.

Provided always and notwithstanding anything hereinafter contained, the aforesaid objects of the Club, shall not be altered, amended, or modified, except, in a General Meeting, for which the unalterable quorum shall not be less than 300 members. Any resolution purporting to alter, amend, or modify the objects of the Club shall not be deemed to have been passed, except by a two thirds majority of the Members present and voting thereon."

3. The Tribunal then set out Rule 35 of the Club Rules, which stated as follows:

"RULE 35 APPOINTMENT OF LIQUIDATORS:

If it be resolved to wind up, the Meeting shall appoint a liquidator or liquidators and fix his or their remuneration. The liquidation shall be conducted as nearly as practicable in accordance with the laws governing voluntary liquidation under the Companies Act or any statutory modifications thereto and any surplus assets remaining after all debts and liabilities of the Club have been discharged shall be divided equally amongst the

Members of the Club as defined in Rules 6.1(i), 6.1(ii), 6.1 (iii), 6.2(i), 6.2(ii), 6.2(iii), 6.2(vii), 6.2(viii) and 6.2(ix).

4. After setting out Section 21AA of the Wealth Tax Act, the Tribunal then referred to this Court's judgment in **CIT v. Indira Balkrishna** (1960) 39 ITR 546 and held:

> "**9.** From the facts of the case, it is clear that members who have joined here have not joined to earn any income or to share any profits. They have joined to enjoy certain facilities as per the objects of the club. The members themselves are contributing to the receipts of the club. The members themselves are contributing to the receipts of the club (sic) and what is the difference between the Income and Expenditure can be said to be only surplus and not income of the assessee-club. It is an accepted principle that principle of mutuality is applicable to the assessee club and hence not liable to income-tax also. At the most, this. may be called the "Body of Individuals" but not an AOP formed with an intention to earn income."

5. It then referred to a CBDT Circular dated 11th January, 1992, explaining the *pari materia* provision of Sections 167A in the Income Tax Act, and therefore inferred, from a reading of the aforesaid Circular, that Section 21AA would not be attracted to the case of the Bangalore Club. It was then held, on a reading of Rule 35, that since members are entitled to equal shares in the assets of the Club on winding-up after paying all debts and liabilities, the shares so fixed are determinate also making it clear that Section 21AA would have no application to the facts of the present case. As a result, the Appellate Tribunal allowed the appeal and set aside the orders of the Assessing Officer and the CIT (Appeals).

6. Against this order, by a cryptic order of the High Court, the decision in **CWT v. Club** 197 ITR Karnataka 609 was stated to cover the facts of the present case, as a result of which the question raised was decided in favour of the revenue by the impugned order dated 23rd January, 2007. A Review Petition filed against the aforesaid order was dismissed on 19th April, 2007.

7. Shri Nikhil Nayyar, learned counsel appearing on behalf of the appellant, referred to the object for the enactment of Section 21AA of the Wealth Tax Act and then took us through the provisions of Section 21AA. According to him, it is settled law by several judgments of this Court that "association of persons" in the context of a taxing statute would only refer to persons who band together with a common object in mind – the common object being to create income and make a profit. As it is clear that the present Club is a social club where the members do not band together for any commercial or business purpose of making income or profits, the section does not get attracted at all. Further, in any case, as a without prejudice argument, it is clear that the individual shares of the members of the said association in income or assets of the association must be indeterminate or unknown to attract the provision of Sec. 21AA. He took us to the Appellate Tribunal judgment and to Rule 35, in particular, to argue that since on winding-up all members get an equal share in the surplus that remains after all debts

and liabilities are dealt with, their shares cannot be said to be indeterminate or unknown. For this purpose, he cited a number of judgments of the High Courts. He then adverted to an explanation that was added to the definition of "person" contained in Section 2(31) of the Income Tax Act, which made it clear that on and from 1st April, 2002, an association of persons need not be persons who band together for the object of deriving income or profits. This explanation does not apply to the Wealth Tax Act, and, in any case, given the fact that the assessment years in question are way before 1st April, 2002, the law laid down by this Court in several judgments on association of persons would directly apply.

8. To counter these arguments, Shri Vikramjit Banerjee, learned Additional Solicitor General, referred to Rule 35 of the Club Rules and relied heavily upon Section 21AA(2). According to Shri Banerjee, sub-section (2) deals with a situation where the association of persons is dissolved, and given Rule 35, the Section, therefore, would directly apply to the Bangalore Club. He then referred to this Court's judgment in **Bangalore Club v. CIT** (2013) 5 SCC 509, in which, for income tax purposes, the Bangalore Club was assessed as an association of persons. This being the case, it cannot be that for income tax purposes, the Bangalore Club is treated as an association of persons but for wealth tax purposes, it cannot be so treated. He then referred to this Court's judgment in

CWT v. Ellis Bridge Gymkhana (1998) 1 SCC 384 in order to support the impugned judgment of the High Court which, according to him, correctly followed **Chikmagalur Club's** case (supra) which, in turn, only relied upon this Court's judgment in **Ellis Bridge Gymkhana** (supra). He also stated that the finding of the Assessing Officer that the shares of a fluctuating body of members would be indeterminate is correct and therefore, even on this ground it is clear that the High Court judgment can be supported.

9. Having heard learned counsel for both sides, it is important to first advert to Section 3, which is the charging section in the Wealth Tax Act. Section 3(1) states as follows:

> "**3. Charge of wealth-tax** — (1) Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957 but before the first day of April, 1993, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I."

10. It will be noticed that only three types of persons can be assessed to wealth tax under Section 3 i.e. individuals, Hindu undivided families and companies. It is clear that if Section 3(1) alone were to be looked at, the Bangalore Club neither being an individual, nor a HUF, nor a company cannot possibly be brought into the wealth tax net under this provision.

11. By the Finance Bill of 1981, Section 21AA was introduced into the Wealth Tax Act. The explanatory notes on the introduction of Section 21AA were as follows:

> "21.1 Under the Wealth Tax Act, 1957, individuals and Hindu Undivided Families are taxable entities but an association of persons is not charged to wealth tax on its net wealth. Where an individual or a Hindu Undivided Family is a member of an association of persons, the value of the interest of such member in the association of persons is determined in accordance with the provisions of the rules and is includible in the net wealth of the member.
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> 21.2 Instances had come to the notice of the Government where certain assessees had resorted to the creation of a large number of associations of persons without specifically defining the shares of the members therein with a view to avoiding proper tax liability. Under the existing provisions, only the value of the interest of the member in the association which is ascertainable is includible in his net wealth. Accordingly, to the extent the value of the interest of the member in the association cannot be ascertained or is unknown, no wealth tax is payable by such member in respect thereof.
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> 21.3 In order to counter such attempts at tax avoidance through the medium of multiple associations of persons without defining the shares of the members, the Finance Act has inserted a new Section 21-AA in the Wealth Tax Act to provide for assessment in the case of associations of persons which do not define the shares of the members in the assets thereof. Sub-section (1) provides that where assets chargeable to wealth tax are held by an association of persons (other than a company or a cooperative society) and the individual shares of the members of the said association in income or the assets of the association on the date of its formation or at any time thereafter, are indeterminate or unknown, wealth tax will be levied upon and recovered from such association in the like manner and to the same extent as it is leviable upon and

recoverable from an individual who is a citizen of India and is resident in India at the rates specified in Part I of Schedule I or at the rate of 3 per cent, whichever course is more beneficial to the Revenue."

12. With this object in mind, Section 21AA was enacted w.e.f. 1st April, 1981 as follows:

> "**21AA. Assessment when assets are held by certain associations of persons** — (1) Where assets chargeable to tax under this Act are held by an association of persons, other than a company or cooperative society or society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India, and the individual shares of the members of the said association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from such association in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act.
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> (2) Where any business or profession carried on by an association of persons referred to in subsection (1) has been discontinued or where such association of persons is dissolved, the Assessing Officer shall make an assessment of the net wealth of the association of persons as if no such discontinuance or dissolution had taken place and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provisions of this Act, so far as may be, shall apply to such assessment.
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> (3) Without prejudice to the generality of the provisions of sub-section (2), if the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceedings under this Act in respect of any such association of persons as is referred to in sub-section (1) is satisfied that the association of persons was guilty of any of the acts specified in section 18 or section

> 18A, he may impose or direct the imposition of a penalty in accordance with the provisions of the said sections.
>
> (4) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.
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> (5) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (4) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly."

13. It can be seen that for the first time from 1st April, 1981, an association of persons other than a company or cooperative society has been brought into the tax net so far as wealth tax is concerned with the rider that the individual shares of the members of such association in the income or assets or both on the date of its formation or at any time thereafter must be indeterminate or unknown. It is only then that the section gets attracted.

14. The first question that arises is as to what is the meaning of the expression "association of persons" which occurs in Section 21AA. In an early judgment of this Court where the expression "association of persons" occurred in the Income Tax Act, 1922 – a cognate tax statute,

this Court in **CIT v. Indira Balkrishna** (supra) posed question no.3 as follows:

> "(3) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessment made on the three widows of Balkrishna Purushottam Purani in the status of an association of persons is legal and valid in law?"

15. After referring to the amendments made in the Income Tax Act speaking of "association of persons" and "association of individuals", this Court went on to hold:

> "**8**…In the absence of any definition as to what constitutes an association of persons, we must construe the words in their plain ordinary meaning and we must also bear in mind that the words occur in a section which imposes a tax on the total income of each one of the units of assessment mentioned therein including an association of persons. The meaning to be assigned to the words must take colour from the context in which they occur…
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> **9.** It is enough for our purpose to refer to three decisions: *In re, B.N. Elias* [(1935) 3 ITR 408]; *CIT* v. *Laxmidas Devidas* [(1937) 5 ITR 584]; and *In re. Dwaraknath Harishchandra Pitale* [(1937) 5 ITR 716]. In *B.N. Elias* Derbyshire, C.J. rightly pointed out that the word "associate" means, according to the *Oxford dictionary*, "to join in common purpose, or to join in an action". Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income profits or gains. This was the view expressed by Beaumont, C.J. in *CIT* v. *Laxmidas Devidas* at p. 589 and also in *Re. Dwaraknath Harishchandra Pitale*. In *re. B.N. Elias* [(1935) III ITR 408] Costello, J. put the test in more forceful language. He said: "It may well be that the intention of the legislature was to hit combinations of

> individuals who were engaged together in some joint enterprise but did not in law constitute partnership…. When we find …. that there is a combination of persons formed for the promotion of a joint enterprise …. then I think no difficulty arise in the way of saying that these persons did constitute an association….”
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> **10.** We think that the aforesaid decisions correctly lay down the crucial test for determining what is an association of persons within the meaning of Section 3 of the Income Tax Act, and they have been accepted and followed in a number of later decisions of different High Courts to all of which it is unnecessary to call attention. It is, however, necessary to add some words of caution here. There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of Section 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.”

16. Likewise, in **G. Murugesan & Brothers v. CIT** 88 ITR 432 (1973), this Court referred with approval to **Indira Balakrishna** (supra) and then held:

> “**11.** For forming an “Association of Persons”, the members of the association must join together for the purpose of producing an income. An “Association of Persons” can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence volition on the part of the member of the association is an essential ingredient. It is true that even a minor can join an “Association of Persons” if his lawful guardian gives his consent. In the case of receiving dividends from shares, where there is no question of any management, it is difficult to draw an inference that two more shareholders functioned as an “Association of Persons” from. The mere fact that they jointly own one or more shares, and jointly receive the dividends declared

> those circumstances do not by themselves go to show that they acted as an "Association of Persons". "

17. These judgments have since been referred to with approval in **Meera and Co. v. CIT** (1997) 4 SCC 677 (see paras 19 and 20) and **Ramanlal Bhailal Patel v. State of Gujarat** (2008) 5 SCC 449 (see paragraph 28). It may be mentioned in passing at this stage that under the Income Tax Act an explanation has been added to the definition of "person" contained in Section 2(31), sub-clause (v) of which includes "an association of persons or a body of individuals, whether incorporated or not". The explanation inserted by amendment, which is w.e.f. 1st April, 2002, is as follows:

> "*Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;"

18. Obviously, therefore, after 1st April, 2002, the ratio of the aforesaid judgments has been undone by this explanation insofar as income tax is concerned.

19. It is well-settled that when Parliament used the expression "association of persons" in Section 21AA of the Wealth Tax Act, it must be presumed to know that this expression had been the subject matter of comment in a cognate allied legislation, namely, the Income Tax Act, as referring to

persons banding together for a common purpose, being a business purpose in the context of a taxation statute in order to earn income or profits. This presumption is felicitously referred to in the following judgments.

20. In **P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition** (1965) 1 SCR 614, this Court had to decide whether the 4th Amendment to the Constitution of India, which amended Article 31(2) of the Constitution, made any change in whether compensation being a just equivalent in money to be paid for acquisition continued to be a just equivalent or something less. This Court held that since the expression "compensation", as interpreted in **State of W.B. v. Bela Banerjee** 1954 SCR 558, continued even after the 4th Amendment, a just equivalent in terms of money for land acquisition would continue having to be paid. The Court held:

> "… Even after the amendment, provision for compensation or laying down of the principles for determining the compensation is a condition for the making of a law of acquisition or requisition. A legislature, if it intends to make a law for compulsory acquisition or requisition, must provide for compensation or specify the principles for ascertaining the compensation. The fact that Parliament used the same expressions, namely, "compensation" and "principles" as were found in Article 31 before the amendment is a clear indication that it accepted the meaning given by this Court to those expressions in Mrs Bela Banerjee case [(1954) SCR 558] . It follows that a legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for

the purpose of ascertaining the "just equivalent" of what the owner has been deprived of. If Parliament intended to enable a legislature to make such a law without providing for compensation so defined, it would have used other expressions like "price", "consideration" etc. In Craies on Statute Law, 6th Edn., at p. 167, the relevant principle of construction is stated thus:

"There is a well-known principle of construction, 'that where the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears."

The said two expressions in Article 31(2) before the Constitution (Fourth Amendment) Act, have received an authoritative interpretation by the highest court in the land and it must be presumed that Parliament did not intend to depart from the meaning given by this Court to the said expressions."

(at page. 626)

21. In **Sakal Deep Sahai Srivastava v. Union of India** (1974) 1 SCC 338, in the context of the Limitation Act, this Court held:

"**8.** The only question of some difficulty raised before us is whether Article 102 or Article 120 of the Limitation Act of 1908 would apply to the case. After having heard the attractive arguments of Mr Yogeshwar Prasad, we have no doubt that a good deal can be said in favour of the contention that a claim for arrears of salary is distinguishable from a claim for wages. But, our difficulty is that the question appears to us to be no longer open for consideration afresh by us, or, at any rate, it is not advisable to review the authorities of this Court, after such a lapse of time when, despite the view taken by this Court that Article 102 of the Limitation Act of 1908 was applicable to such cases, the Limitation Act of 1963 had been passed repeating the law, contained in Articles 102 and 120 of the Limitation Act of 1908, in identical terms without any modification. The Legislature must be presumed to be cognizant of the view of this Court that a claim of the nature before us, for arrears of salary, falls within the purview of Article 102 of the Limitation Act of 1908. If Parliament, which is deemed to be aware of the declarations of law by this Court, did not alter the law, it must be deemed to have accepted the interpretation of this Court even though the correctness of it may be open to doubt. If doubts had arisen, it was for the Legislature to clear these doubts. When the Legislature has not done so, despite the repeal of the Limitation Act of 1908, and the enactment of the Limitation Act of 1963 after the decisions of this Court, embodying a possibly questionable view, we think it is expedient and proper to overrule the submission made on behalf of the appellant that the correctness of the view adopted by this Court in its decisions on the question so far should be re-examined by a larger Bench."

22. Likewise, in **Diwan Bros. v. Central Bank of India** (1976) 3 SCC 800, this Court referred to the well-known dictum of Lord Buckmaster in **Barras v. Aberdeen Steam Trawling and Fishing Company** 1933 AC 402 and held as under:

> **"22.** Apart from the above considerations, it is a well-settled principle of interpretation of statutes that where the Legislature uses an expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. *Craies on Statute Law* observes as follows:
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> "There is a well-known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted, unless a contrary intention appears."
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> **23.** In *Barras* v. *Aberdeen Steam Trawling and Fishing Company* [1933 AC 402, 411] Lord Buckmaster pointed out as follows:

> "It has long been a well-established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context must be construed so that the word or phrase is interpreted according to the meaning that has previously been ascribed to it."
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> Craies further points out that the rule as to words judicially interpreted applies also to words with well-known legal meanings, even though they have not been the subject of judicial interpretation. Thus applying these principles in the instant case it would appear that when the Court Fees Act uses the word "decree" which had a well-known legal significance or meaning, then the Legislature must be presumed to have used this term in the sense in which it has been understood, namely, as defined in the Code of Civil Procedure even if there has been no express judicial interpretation on this point."

23. A recent judgment of this Court namely, **Shree Bhagwati Steel Rolling Mills v. CCE** (2016) 3 SCC 643, refers to the same presumption as follows:

> "**21.** It is settled law that Parliament is presumed to know the law when it enacts a particular piece of legislation. The Prevention of Corruption Act was passed in the year 1988, that is long after 1969 when the Constitution Bench decision in Rayala Corpn. [Rayala Corpn. (P) Ltd. v. Director of Enforcement, (1969) 2 SCC 412] had been delivered. It is, therefore, presumed that Parliament enacted Section 31 knowing that the decision in Rayala Corpn. [Rayala Corpn. (P) Ltd. v. Director of Enforcement, (1969) 2 SCC 412] had stated that an omission would not amount to a repeal and it is for this reason that Section 31 was enacted. This again does not take us further as this statement of the law in Rayala Corpn. [Rayala Corpn. (P) Ltd. v. Director of Enforcement, (1969) 2 SCC 412] is no longer the law declared by the Supreme Court after the decision in Fibre Board case [Fibre Boards (P) Ltd. v. CIT,

> (2015) 10 SCC 333]. This reason therefore again cannot avail the appellant."

24. This being the case, it is clear that in order to be an association of persons attracting Section 21AA of the Wealth Tax Act, it is necessary that persons band together with some business or commercial object in view in order to make income or profits. The presumption gets strengthened by the language of Sec. 21AA (2), which speaks of a business or profession carried on by an association of persons which then gets discontinued or dissolved. The thrust of the provision therefore, is to rope in associations of persons whose common object is a business or professional object, namely, to earn income or profits. Bangalore Club being a social club whose objects have been referred to by the Appellate Tribunal in this case make it clear that persons who are banded together do not band together for any business purpose or commercial purpose in order to make income or profits. In fact, the nature of these kind of clubs has been set out in **Cricket Club of India Ltd v. Bombay Labour Union** (1969) 1 SCR 600 as follows:

> "What we have to see is the nature of the activity in fact and in substance. Though the Club is incorporated as a Company, it is not like an ordinary Company constituted for the purpose of carrying on business. There are no shareholders. No dividends are ever declared and no distribution of profits takes place. Admission to the Club is by payment of admission fee and not by purchase of shares. Even this admission is subject to balloting. The membership is not transferable like the right of shareholders. There is the provision for expulsion of a

> Member under certain circumstances which feature never exists in the case of a shareholder holding shares in a Limited Company. The membership is fluid. A person retains rights as long as he continues as a Member and gets nothing at all when he ceases to be a Member, even though he may have paid a large amount as admission fee. He even loses his rights on expulsion. In these circumstances, it is clear that the Club cannot be treated as a separate legal entity of the nature of a Limited Company carrying on business. The Club, in fact, continues to be a Members' Club without any shareholders and, consequently, all services provided in the Club for Members have to be treated as activities of a self-serving institution."
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> (at page. 614)

This judgment has been referred to with approval recently in **State of West Bengal v. Calcutta Club Limited** (2019) 13 SCALE 474 at paragraph 28.

25. At this stage, it is important to refer to **CWT v. Ellis Bridge Gymkhana,** (supra). In this case, the Ellis Bridge Gymkhana, like the Bangalore Club, is an unincorporated club. The assessment years involved in this case are from 1970-71 to 1977-78 i.e. prior to Section 21AA coming into force. Despite the fact that Section 21AA did not apply, this Court referred to Section 21AA as follows:

> **"15.** All these provisions go to show that the Wealth Tax Act has been drafted on the same lines as the Indian Income Tax Act, 1922. There is great similarity of wording between the various provisions of the Wealth Tax Act and corresponding provisions of the Indian Income Tax Act, 1922. But in the case of the charging Section 3 of the Wealth Tax Act, the phraseology of the charging Section 3 of the Indian Income Tax Act, 1922 has not been adopted. Unlike Section 3 of the Income Tax Act, Section

3 of the Wealth Tax Act does not mention a firm or an association of persons or a body of individuals as taxable units of assessment.

16. The position has been placed beyond doubt by insertion of Section 21-AA in the Wealth Tax Act itself. This amendment was effected by the Finance Act, 1981 with effect from 1-4-1981. It provides for assessment of association of persons in certain special cases and not otherwise."

The Court then went on to hold:

"17. It will be seen that assessment as an association of persons can be made only when the individual shares of members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown. It is only in such an eventuality that an assessment can be made on an association of persons, otherwise not. Sub-section (2) of Section 21-AA deals with cases of such associations as mentioned in sub-section (1). That means only association of persons in which individual shares of the members were unknown or indeterminate can be subjected to wealth tax. Sub-section (3) also deals with association of persons referred to in sub-section (1). Sub-sections (4) and (5) deal with some consequences which will follow the members of an association of persons spoken of in sub-section (1) in the case of discontinuance or dissolution.

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19. In our view, Section 21-AA far from helping the case of the Revenue directly goes against its contention. An association of persons cannot be taxed at all under Section 3 of the Act. That is why an amendment was necessary to be made by the Finance Act, 1981 whereby Section 21-AA was inserted to bring to tax net wealth of an association of persons where individual shares of the members of the association were unknown or indeterminate."

After referring to the explanatory notes introducing Section 21AA in paragraph 32, the Court then went on to hold:

> **"33.** It will appear from this notification that the Central Board of Direct Taxes clearly recognised that the charge of wealth tax was on individuals and Hindu Undivided Families and not on any other body of individuals or association of persons. Section 21-AA has been introduced to prevent evasion of tax. In a normal case, in assessment of an individual, his wealth from every source will be added up and computed in accordance with provisions of the Wealth Tax Act to arrive at the net wealth which has to be taxed. So, if an individual has any interest in a firm or any other non-corporate body, then his interest in those bodies or associations will be added up in his wealth. It is only where such addition is not possible because the shares of the individual in a body holding property is unknown or indeterminate, resort will be taken to Section 21-AA and association of individuals will be taxed as association of persons."

26. A perusal of this judgment would show that Section 21AA has been introduced in order to prevent tax evasion. The reason why it was enacted was not to rope in association of persons *per se* as "one more taxable person" to whom the Act would apply. The object was to rope in certain assessees who have resorted to the creation of a large number of association of persons without specifically defining the shares of the members of such associations of persons so as to evade tax. In construing Section 21AA, it is important to have regard to this object.

27. In **K P Varghese v. ITO,** 1982 (1) SCR 629, what arose for interpretation before the Supreme Court was in the context of capital gains – as to

whether, to attract the applicability of Sec. 52(2) of the Income Tax Act, understatement of consideration is a prerequisite. On a purely literal reading of Sec. 52(2), it would be clear that no such condition has been mentioned. However, this Court, after referring to the object of the section held:

> "Thus it is not enough to attract the applicability of sub-section (2) that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared in respect of the transfer by not less than 15 per cent of the value so declared, but it is furthermore necessary that the full value of the consideration in respect of the transfer is understated or in other words, shown at a lesser figure than that actually received by the assessee. Sub-section (2) has no application in case of an honest and bona fide transaction where the consideration in respect of the transfer has been correctly declared or disclosed by the assessee, even if the condition of 15 per cent difference between the fair market value of the capital asset as on the date of the transfer and the full value of the consideration declared by the assessee is satisfied."
>
> (at page. 652, 653)

28. The Bangalore Club is an association of persons and not the creation, by a person who is otherwise assessable, of one among a large number of associations of persons without defining the shares of the members so as to escape tax liability. For all these reasons, it is clear that Section 21AA of the Wealth Tax Act does not get attracted to the facts of the present case.

29. However, the impugned judgment of the High Court relies solely upon **CWT v. Chikmagalur Club** (supra). This case dealt with a club that was registered under the provisions of the Karnataka Societies Registration Act, 1960. After referring copiously to the Appellate Authority's orders on facts in this case, the Court went on to hold:

> "**10.** … Several High Courts and the Tribunals have taken different view on the question whether a club registered under the provisions of Karnataka Societies Registration Act is exigible to tax under the provisions of the Wealth Tax Act, but in our view, for the present, the issue is now settled by the pronouncement of the Supreme Court in the case of *the Commissioner of Wealth Tax* v. *Ellis Bridge Gymkhana* [229 ITR 1.] — wherein it is held that 'club is not assessable to wealth tax in assessment years 1970-1971 to 1977-1978 as an Association of Persons' and while saying so, the Court has observed that' the position has been placed beyond doubt by the insertion of Section 21AA in the Wealth Tax Act itself."

For this purpose, paragraph 17 already extracted in the **Ellis Bridge Gymkhana** case (supra) was referred to by the said judgment. After referring to paragraph 17, the Court then concluded:

> **"13.** … Now that the scope of Section 21AA of the Act has been explained by the Apex Court in *Ellies Bridge Gymkhana Club's case*-229 ITR 1, we need not dilate much on the scope and interpretation of the said Section. It would be suffice to notice that assessment as an association of persons can be made only, when the individual shares of the members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown can be subjected to wealth tax. In the present case, the assessee is a club registered under the provisions of the Karnataka Societies Registration Act and had declared 'nil' wealth and had claimed that it is not

> susceptible to the provision of wealth Tax Act, since it is only an association of persons providing recreation facilities to its members. This claim, in our view, is rightly rejected by both the assessing authority as well as by the first appellate authority on the ground that the assessee is an association of persons and the members are the owners of the assets and the individual shares of the members in the owners of the assets and the individual shares of the members in the income or assets or both of the association on the date of formation or any time thereafter or indeterminate or unknown and accordingly, has subjected the assessee to wealth tax."

30. What will be noticed is that the High Court in **Chikmagalur Club** (supra) only referred to paragraph 17 and omitted to refer to paras 19, 32 and 33 of the **Ellis Bridge Gymkhana** judgment (supra) which have been referred to by us hereinabove. If all these paragraphs would have been referred to, what would have been clear is that a social club like the Chikmagalur Club could not possibly be said to be an association of persons regard being had to the object sought to be achieved by enacting Section 21AA, which is a Section enacted in order to prevent tax evasion. As has been pointed out by us hereinabove, the Section was not introduced to add one more category to the category of taxable persons – that could have been done by amending the charging section i.e. Section 3(1) of the Wealth Tax Act. Further, the High Court judgment is completely oblivious of the line of judgments starting with **Indira Balakrishna's** case (supra) by which "association of persons" must mean persons who are banded together with a common object –

and, in the context of a taxation statute, common object being a business object being to earn income or profits. This judgment does not refer to **Indira Balakrishna** (supra) and the judgments following it at all. For all these reasons, the judgment in **CWT v. Chikmagalur Club** (supra) not being correctly decided, is overruled. Equally, the High Court judgment which rests solely upon the decision in **Chikmagalur Club's** case (supra) has no legs to stand.

31. We now come to some of the points raised by the learned Additional Solicitor General, Shri Banerjee. The submission that Section 21AA (2) which deals with dissolution of an association of persons and the fact that on dissolution under Rule 35 of the Bangalore Club, members get an equal share would show first, that the Bangalore Club is an association of persons; and second, that the member's share in its income and assets are indeterminate or unknown, is an argument which has to be stated to be rejected. First and foremost, sub-section (2) begins with the words "any business or profession carried on" by an association of persons. No business or profession is carried on by a social members club. Further, the association of persons mentioned in sub-section (1) must be persons who have banded together for a business objective – to earn profits – and if this itself is not the case, then sub-section (2) cannot possibly apply. Insofar as Rule 35 is concerned, again what is clear is that on liquidation, any surplus assets

remaining after all debts and liabilities of the club has been discharged, shall be divided equally amongst all categories of members of the club. This would show that "at any time thereafter" within the meaning of Section 21AA (1), the members' shares are determinate in that on liquidation each member of whatsoever category gets an equal share.

32. The judgments cited by Shri Nikhil Nayyar in so far as this aspect is concerned, have no direct relevance. The judgment in **CWT v. Rama Varma Club** 226 ITR 898 and **CWT v. George Club** 191 ITR 368 are both judgments in which no part of the assets is to be distributed even on liquidation to any of the members of these clubs. Thus, it was held in these cases that the members do not have any share in the income or assets of the club at all. The same cannot be said in the facts of this case inasmuch as under Rule 35 the members of the Bangalore Club are entitled to receive surplus assets in the circumstances stated in Rule 35 - equally on liquidation. However, the result remains the same – viz., that even if it be held that the Bangalore Club is an association of persons, the members' shares being determinate do not attract Section 21AA.

33. Shri Banerjee then relied upon the judgment in **Bangalore Club v. CIT** (2013) 5 SCC 509 only in order to point out that the Bangalore Club was taxed as an AOP under the Income Tax Act and cannot and should not therefore, escape liability under the Wealth Tax Act (an allied and

cognate Act). First and foremost, the definition of "person" in Section 2(31) of the Income Tax Act would take in both an association of persons and a body of individuals. For the purposes of income tax, the Bangalore Club could perhaps be treated to be a 'body of individuals' which is a wider expression than 'association of persons' in which such body of individuals may have no common object at all but would include a combination of individuals who had nothing more than a unity of interest. This distinction has been made by the Andhra Pradesh High Court in **Deccan Wine and General Stores v. CIT** 106 ITR 111 at pages 116, 117. Quite apart from this, to be taxed as an association of persons under the Income Tax Act is to be taxed as an association of persons *per se*. We have already seen that Section 21AA does not enlarge the field of tax payers but only plugs evasion as the association of persons must be formed with members who have indeterminate shares in its income or assets. For all these reasons, we cannot accede to Shri Banerjee's argument that being taxed as an association of persons under the Income Tax Act, the Bangalore Club must be regarded to be an 'association of persons' for the purpose of a tax evasion provision in the Wealth Tax Act as opposed to a charging provision in the Income Tax Act. One last argument of Shri Banerjee needs to be addressed. According to the learned ASG, the fact that the membership of the club is a fluctuating body of individuals would necessarily lead to the conclusion that the shares of the members in the assets or the income of the club would be indeterminate. In **CWT v. Trustees of H.E.H. Nizam's Family** 108 ITR 555 (1977), this court had to construe Sec. 21 of the Wealth Tax Act. Sec. 21 (1) & (4) which are relevant for our purpose are set out hereinbelow:

> "**21.** (1) In the case of assets chargeable to tax under this Act, which are held by a court of wards or an administrator-general or an official trustee or any receiver or manager or any other person, by whatever name called, appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards, administrator-general, official trustee, receiver, manager or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held, and the provisions of this Act shall apply accordingly.
>
> ***xxx xxx xxx***
>
> (4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager, or other person aforesaid as if the person on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act."

34. The argument made in this case was that, as the members of the Nizam's family trust who are beneficiaries thereof would be a fluctuating body of persons, the beneficiaries must be said to be indeterminate as a result of which Sec. 21(4) of the Act would apply and not Sec. 21(1). This was repelled by this Court stating:

> "This immediately takes us to the question as to which of the two sub-sections, (1) or (4) of Section 21 applies for the purpose of assessing the assessees to wealth tax in respect of the beneficial interest in the remainder qua each set of unit or units allocated to the relatives specified in the Second Schedule. Now it is clear from the language of Section 3 that the charge of wealth tax is in respect of the net wealth on the relevant valuation date, and, therefore, the question in regard to the applicability of sub-section (1) or (4) of Section 21 has to be determined with reference to the relevant valuation date. The Wealth Tax Officer has to determine who are the beneficiaries in respect of the remainder on the relevant date and whether their shares are indeterminate or unknown. It is not at all relevant whether the beneficiaries may change in subsequent years before the date of distribution, depending upon contingencies which may come to pass in future. So long as it is possible to say on the relevant valuation date that the beneficiaries are known and their shares are determinate, the possibility that the beneficiaries may change by reason of subsequent events such as birth or death would not take the case out of the ambit of sub-section (1) of Section 21. It is no answer to the applicability of sub-section (1) of Section 21 to say that the beneficiaries are indeterminate and unknown because it cannot be predicated who would be the beneficiaries in respect of the remainder on the death of the owner of the life interest. The position has to be seen on the relevant valuation date as if the preceding life interest had come to an end on that date and if, on that hypothesis, it is possible to determine who precisely would

be the beneficiaries and on what determinate shares, sub-section (1) of Section 21 must apply and it would be a matter of no consequence that the number of beneficiaries may vary in the future either by reason of some beneficiaries ceasing to exist or some new beneficiaries coming into being. Not only does this appear to us to be the correct approach in the application of sub-section (1) of Section 21, but we find that this has also been the general consensus of judicial opinion in this country in various High Courts during the last about thirty years. The first decision in which this view was taken was rendered as far back as 1945 by the Patna High Court in *Khan Bahadur M. Habibur Rahman* v.*CIT* [(1945) 13 ITR 189 (Pat)] and since then, this view has been followed by the Calcutta High Court in *Suhashini Karuri* v. *WTO* [(1962) 46 ITR 953 (Cal)] the Bombay High Court in *Trustees of Putlibai R.F. Mulla Trust* v. *CWT* [(1967) 66 ITR 653, 657-8 (Bom)] and *CWT* v. *Trustees of Mrs Hansabai Tribhu wandas Trust* [(1967) 69 ITR 527 (Bom)] and the Gujarat High Court in *Padmavati Jaykrishna Trust* v.*CIT* [(1966) 61 ITR 66, 73-4 (Guj)]. The Calcutta High Court pointed out in *Suhashini Karuri case*:

"The share of a beneficiary can be said to be indeterminate if at the relevant time the share cannot be determined but merely because the number of beneficiaries vary from time to time, one cannot say that it is indeterminate."

The same proposition was formulated in slightly different language by the Bombay High Court in *Trustees of Putalibai R.F. Mulla Trust case* [(1967) 66 ITR 653, 657-8 (Bom)]:

"The question whether the shares of the beneficiaries are determinate or known has to be judged as on the relevant date in each respective year of taxation. Therefore, whatever may be the position — as to any future date, so far as the relevant date in each year is concerned, it is upon the terms of the trust deed always possible to determine who are the sharers and what their shares respectively are."

> The Gujarat High Court also observed in *Padmavati Jaykrishna Trust case* [(1966) 61 ITR 66, 73-4 (Guj)] :
>
> ". . . in order to ascertain whether the shares of beneficiaries and their numbers were determinate or not, the Wealth Tax Officer has to ascertain the facts as they prevailed on the relevant date and therefore any variation in the number of beneficiaries in future would not matter and would not make sub-section (4) of Section 21 applicable."
>
> These observations represent correct statement of the law and we have no doubt that in order to determine the applicability of sub-section (1) of Section 21, what has to be seen is whether on the relevant valuation date, it is possible to say with certainty and definiteness as to who would be the beneficiaries and whether their shares would be determinate and specific, if the event on the happening of which the distribution is to take place occurred on that date. If it is, sub-section (1) of Section 21 would apply: if not, the case will be governed by sub-section (4) of Section 21."

35. It is thus clear that what has to be seen in the facts of the present case is the list of members on the date of liquidation as per Rule 35 cited hereinabove. Given that as on that particular date, there would be a fixed list of members belonging to the various classes mentioned in the rules, it is clear that, applying the ratio of **Trustees of H.E.H. Nizam's Family** (supra), such list of members not being a fluctuating body, but a fixed body as on the date of liquidation would again make the members 'determinate' as a result of which, Sec. 21AA would have no application.

36. For all these reasons, the impugned judgment and the review judgment are set aside. The appeals are allowed with no order as to costs.

……………..……………….J.
(R. F. Nariman)

……….……………………J.
(Navin Sinha)

……….……………………J.
(Indira Banerjee)

New Delhi.
September 08, 2020.